

MAY 23 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHI JIE PAN,

Defendant - Appellant.

No. 06-10562

D.C. No. CR-99-00452-DAE

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
David A. Ezra, District Judge, Presiding

Submitted May 20, 2008**

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Shi Jie Pan appeals from the district court's decision, following a limited remand under *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005)

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

(en banc), that the sentence it imposed would not have been materially different had it known that the Sentencing Guidelines were advisory. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Pan contends that, at sentencing, the district court violated his due process rights by requiring the government to prove the factual basis for five Guidelines enhancements by only a preponderance of the evidence, even though the enhancements had an extremely disproportionate impact on his sentence. Because Pan did not raise this contention in his original appeal, it is unreviewable. *See United States v. Thornton*, 511 F.3d 1221, 1228-29 (9th Cir. 2008); *United States v. Combs*, 470 F.3d 1294, 1297 (9th Cir. 2006).

AFFIRMED.